

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 40. Petition for Panel Rehearing**(a) Time to File; Contents; Answer; Action by the Court if Granted.**

- (1) **Time.** Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment, unless an order shortens or extends the time.
- (2) **Contents.** The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.
- (3) **Answer.** Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.
- (4) **Action by the Court.** If a petition for panel rehearing is granted, the court may do any of the following:
 - (A) make a final disposition of the case without reargument;
 - (B) restore the case to the calendar for reargument or resubmission; or
 - (C) issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

FEDERAL CIRCUIT RULE

Rule 40. Petition for Panel Rehearing**(a) Contents of Petition for Panel Rehearing.** The preferred contents and organization for a petition for panel rehearing are:

- (1) yellow cover with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (2) the certificate of interest (see Federal Circuit Rule 47.4);
- (3) the table of contents;
- (4) the points of law or fact overlooked or misapprehended by the court;
- (5) the argument;
- (6) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and
- (7) the proof of service (see Federal Rule of Appellate Procedure 25(d)).

(b) Addendum. A copy of the opinion or judgment of affirmance without opinion sought to be reheard must be bound with the petition for panel rehearing as an addendum.**(c) Items Excluded from Page Limitation; Other Material.**

- (1) **Items Excluded.** The following items do not count against the page limitation in Federal Rule of Appellate Procedure 40(b):
 - (A) the certificate of interest;
 - (B) the table of contents;
 - (C) the table of citations;
 - (D) the addendum containing a copy of the opinion or judgment of affirmance without opinion; and
 - (E) any addendum containing statutes, rules, regulations, and similar matters.
- (2) **Other Material.** Material not listed in this Federal Circuit Rule 40 may not be included in the addendum or in an appendix without leave of the court.

(d) Answer. If the court requests an answer, which must not exceed 15 pages unless otherwise ordered, the preferred contents and organization for the answer are:

- (1) brown cover with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (2) the certificate of interest (see Federal Circuit Rule 47.4);
- (3) the table of contents;

(4) the argument; and

(5) the proof of service (see Federal Rule of Appellate Procedure 25(d)).

(e) Time. The time limits set forth in Federal Rule of Appellate Procedure 40(a)(1) also apply to a motion for panel reconsideration of a dispositive panel order.

(f) Informal Petition for Panel Rehearing; Answer.

(1) **Informal Petition.** A pro se party may file an original and 3 copies of an informal petition for panel rehearing in letter form not to exceed 5 typewritten double-spaced pages, attaching to each a copy of the opinion or judgment sought to be reheard.

(2) **Informal Answer.** If the court requests an answer to an informal petition for panel rehearing, or if the court requests a pro se party to answer a formal petition for panel rehearing, the answer may be informal, following the standards prescribed for informal briefs. The informal answer may not exceed 5 typewritten double-spaced pages, and must be filed in an original and 3 copies.

(g) Length of Amicus Curiae Brief. Except by the court's permission or direction, an amicus curiae brief submitted in connection with a petition for panel rehearing must be accompanied by a motion for leave to file and must not exceed 10 pages.

Practice Notes

Petition for Panel Rehearing Not Filed When Mailed. A petition for panel rehearing, unlike a brief, is not deemed filed when mailed; it must be received by the clerk within the time fixed for filing. The time provided in Federal Rule of Appellate Procedure 40(a)(1) runs from the date the judgment is entered (see Federal Rule of Appellate Procedure 36), not from the date counsel receives the opinion or order. Therefore, Federal Rule of Appellate Procedure 26(c) does not apply. The clerk may return an untimely petition for panel rehearing.

Action by the Court. When a petition for panel rehearing is filed, the clerk will transmit copies to the panel that decided the case. The clerk will enter an order denying the petition unless a majority of the panel agrees to rehear the case. Rehearing before the panel may take place with or without further briefing or oral argument by the parties as the court directs.